Petition

81-1902

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1981

No.

TAMOTSU TANAKA, PETITIONER

v.

CREDITORS' COMMITTEE #1, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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v.

CREDITORS' COMMITTEE #1, ET AL.*

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QUESTION PRESENTED

Whether the reasonable compensation of an attorney representing the trustee in bankruptcy is limited to something less than what such attorney would have charged private clients for the same or similar representation and in complete disregard of whether such attorney's performance was of substantial benefit to the estate or whether the administration of the bankruptcy case was an overwhelming success.

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*Defendant-Appellees below, Hart, Leavitt & Hunt, and J. Carl Osborne, Trustee, do not at this time join in Tamotsu Tanaka's Petition for a Writ of Certiorari. In addition to Creditors' Committee #1, the respondents include THC Depositors' Association.

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Tamotsu Tanaka, Attorney at Law, Defendant-Appellee below and Petitioner herein, petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, *infra*, p. 1a-11a). The order of the district court (App. B, *infra*, p. 12a-17a) is not reported.

JURISDICTION

The judgment of the Court of Appeals (App. A, *infra*, p. 1a-11a) was filed on October 19, 1981. After a timely petition for rehearing was filed, an Order Denying Petition for Rehearing (App. C, *infra*, p. 18a) was filed on January 14, 1982. An Order on Motion for Stay of Mandate (App. D, *infra*, p. 19a-20a) was filed on January 28, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

1. Section 241 of the Bankruptcy Act of 1898, as amended in 1938, 11 U.S.C. §641, reads, in pertinent part:

> The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—
>
> (1) by a referee;
>
> (2) by a special master;
>
> (3) by the trustee and other officers, and the attorneys for any of them;
>
> (4) by the attorney for the debtor; and
>
> 5) by the attorney for the petitioning creditors.
>
> Such compensation of referees and trustees shall not be governed by sections 40 and 48 of this Act.

2. 28 U.S.C. §2075, as enacted in 1964, reads in pertinent part: The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and

motions, and the practice and procedure under the Bankruptcy Act [11 U.S.C. §§1 *et seq.*]

Such rules shall not abridge, enlarge, or modify any substantive right.

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

3. Rule 219(c)(1) of the Rules of Bankruptcy Procedure, reads in pertinent part:

> The compensation allowable by the court to a trustee, receiver, marshal, attorney, accountant, or other person entitled to compensation for services rendered in the administration of a bankrupt estate shall be reasonable, and in making allowances the court shall give due consideration to the nature, extent, and value of the services rendered as well as to the conservation of the estate and the interests of creditors.

4. Rule 10-215(c)(1) of the Rules of Bankruptcy Procedure, reads in pertinent part:

> (A) Reasonable compensation for necessary services and reimbursement of necessary expenses incurred in a Chapter X case may be allowed by the court to the trustee, receiver, examiner, and their attorneys, the attorney for the debtor in possession, the attorney for the debtor, and such other persons as may be authorized to assist the trustee, receiver, examiner, or debtor in possession.

STATEMENT

1. THC Financial Corp. (hereinafter called "THCF") was incorporated in 1961 in the State of Hawaii as a wholly-owned subsidiary of The Hawaii Corporation (hereinafter called "THC"). THCF was formed to provide financing for customers of its parent. In 1962, THCF received a license from the State of

Hawaii to do business as an industrial loan company. To generate capital for loans, THCF subsequently offered debentures and deposit accounts to Hawaii residents (App. A, *infra,* p. 2a).

THCF acquired Marine Finance, Ltd. in 1972, another Hawaii-based industrial loan company. Falcon Life Insurance Company and Commercial Bankers Life Insurance Company were also acquired by THCF. By March 31, 1973, its assets totaled approximately $40 million and its deposits exceeded $30.8 million.

However, this facade of apparent financial stability quickly degenerated in the subsequent years. No profits were reported by THCF after fiscal year 1973. During the fiscal year of 1974, THCF lost more than $200,000.00 with a write-off for loan losses of $977,000.00. During the fiscal year ending March 1975, losses topped $2.8 million with a provision for loan losses of a staggering $3.8 million. By the fiscal year ending March 31, 1976, more than 81% of THCF's loans were delinquent and losses totaled $5.5 million, including a provision for loan losses of $3.8 million.

2. In December 1976, THCF was placed under bankruptcy administration pursuant to Chapter XI of the Bankruptcy Act of 1898. At that time, more than 14,000 THCF deposit accounts were frozen, representing claims against the estate totaling $41 million. J. Carl Osborne was appointed receiver. Subsequently in March 1977, upon Motion of the Securities and Exchange Commission, all further proceedings were transferred to Chapter X of the Bankruptcy Act. Osborne was then appointed trustee (App. A, *infra,* p. 2a).

3. Tamotsu Tanaka (hereinafter called "Tanaka"), petitioner herein, was initially employed as general counsel to the receiver in December 1976. Subsequently in March 1977, when the proceedings were converted from Chapter XI to Chapter X, Tanaka continued as general counsel to the trustee. At the time that Tanaka was retained as counsel for receiver Osborne, Tanaka agreed to represent the trustee on a reasonable fee basis. Tanaka agreed to bill the estate the minimum hourly rates for himself and his associates on an interim fee basis. If the bankruptcy administration proved to be successful, Tanaka may have received an additional fee commensurate with the success of the bankruptcy proceeding. Tanaka understood that the award of any fee was subject to the approval of the bankruptcy court. When the case was converted to a proceeding pursuant to Chapter X of the

Bankruptcy Act, and Tanaka was retained as counsel for the trustee, Osborne, the reasonable fee arrangement remained unaltered.

As general counsel for the estate, Tanaka's function included (a) the processing and settlement of claims, (b) transmitting notices to creditors and other interested parties, (c) negotiating the sale of a substantial amount of THCF real property, and (d) court appearances and trials on matters concerning the estate. In each respect, the district court found that Tanaka's work was thorough, excellent and of great benefit to the estate and the creditors (App. A, *infra,* p. 2a-3a).

4. Throughout the administration of the bankruptcy proceedings, interim compensation awards were made to Tanaka, as well as other individuals, pursuant to the Order Establishing a Fixed Date for Hearing on Monthly Interim Compensation, Reimbursement of Expenses and of Maximum Amounts That May Be Awarded to Trustee and Designated Attorneys and Accounting Firms That Perform Continuous and Extended Services to the Estate and Date, Time and Place of First Hearing, filed on May 18, 1977 (App. E, *infra,* p. 21a-24a). A maximum rate of interim compensation was fixed at $20,000.00 per month per law firm and a maximum hourly rate of $75.00 per hour per attorney. The May '8, 1977, Order provided in pertinent part that:

> [I]nterim allowances of compensation shall be considered as partial compensation for services rendered to the estate, and any allowances made shall not be computed on any basis of overall compensation or allowance, but shall be taken into account upon the termination of the proceeding when final compensation for the Trustee and Trustee's attorneys and certified public accounting firm is determined and allowed (App. E, *infra,* p. 23a).

On May 16, 1979, the district court filed its Order Establishing New Guidelines for Interim Allowances of Compensation (App. F, *infra,* p. 25a-28a). A provision similar to the one cited *supra* was also contained therein (App. F, *infra,* p. 27a).

The $75.00 maximum rated fixed by the Order of May 18, 1977, was the minimum rate charged by Tanaka at that time for his clients. The $80.00 maximum rate fixed by the subsequent Order was less than the minimum hourly rate then charged by

Tanaka. Associate attorneys were awarded hourly fees of $25.00–$35.00 per hour. Unassociated attorneys were billed out at a rate of $50.00 per hour. A total of 4,669 hours was billed and interim compensation of $269,165.00 plus 4% Hawaii excise tax was awarded to Tanaka (App. A, *infra*, p. 3a). It is conceded that the hours spent on the job by Tanaka were not excessive.

5. The THCF bankruptcy proceedings has been very successful. The Trustee's financial report filed on January 27, 1978, shows that as of November 30, 1976, the estate had a deficiency in the net assets of $9,848,400.00. By December 31, 1978, the deficit was reduced to $5,987,435.00. In other words, the value of the debtor's estate was increased by $3,860,965.00. Total distribution to creditors totaled $28,860,518.00 or 70 cents on the dollar. Hence in two years, each creditor had received 70 cents of each dollar of his claim with more to come.

6. On February 5, 1979, Tanaka filed an application for final fees. In his application, Tanaka sought (a) approval of the interim fees of $269,165.00 plus Hawaii excise tax previously awarded and (b) an additional fee award of $60,000.00. The application requested final fees for the time and effort (totaling 4,669 hours) at an hourly rate of $85.00 for senior attorneys and $45.00 for junior associate attorneys (App. A, *infra*, p. 4a).

A hearing on Tanaka's application, along with several other fee applicants, was heard on June 28, 1979. By Order filed on July 19, 1979, Tanaka was awarded final fees of $324,165.00 plus Hawaii excise tax and reimbursement of expenses advanced to March 1, 1979. In essence, the district court awarded Tanaka an additional compensation of $55,000.00 plus the Hawaii excise tax. In awarding the increased compensation, the bankruptcy court specifically found that comparative rates for legal services equivalent to that exhibited by Tanaka in the Honolulu, Hawaii, area ranged from $85.00–$115.00 per hour. The Court also listed the many instances wherein Tanaka's services resulted in substantial benefits to the estate. The Court concluded that Tanaka's work "has been of consistent high quality." With regard to the time spent by Tanaka, the Court held that while the time spent is an important element in the determination of final fee awards, it is not the sole criteria. "The complexity of the task, the skill and experience brought to bear by the attorney performing the task, the diligence, tenacity and judgment displayed by the attorney; customary

charges in the community for such or similar legal services are other significant factors." (App. B, *infra*, p. 15a-16a).

7. On August 3, 1979, the THC Depositors' Association and Creditors' Committee No. 1 (hereinafter called "the Creditors") filed a Petition for Leave to Appeal the Award of Final Compensation to Tanaka. On April 22, 1980, the Ninth Circuit Court of Appeals granted the Petition.

The Court of Appeals reversed the award of additional compensation of $55,000.00 as to Tanaka and affirmed the award of Hawaii excise tax (App. A, *infra*, p. 11a).

The Court of Appeals held that "[t]he supplemental award to Tanaka must be reversed because it compensates him in excess of what he would have charged private clients during the period of the representation." (App. A, *infra*, p. 7a). The Court of Appeals refused to follow the precedent set by the Fifth Circuit Court in *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088 (5th Cir. 1977), wherein "an attorney was compensated in excess of his usual hourly rate because of his remarkable success in maximizing recovery for the estate creditors." (App. A, *infra*, p. 7a). The Ninth Circuit adhered strictly to the principle established in *York International Building, Inc. v. Chaney*, 527 F.2d 1069 (9th Cir. 1975) that any attorney "should not expect as much for [his] services in bankruptcy proceedings as [he] might in private employment."

REASONS FOR GRANTING THE WRIT

1. There is a direct conflict between the Ninth Circuit Court of Appeals and the Fifth Circuit Court of Appeals in determining the reasonableness of attorney's fees pursuant to §241 of the Bankruptcy Act.

The Court of Appeals for the Fifth Circuit, in *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088 (5th Cir. 1977), and its progeny recognized that there is no single criteria in determining the award of attorney's fees in bankruptcy proceedings. Among the numerous factors to be considered are: (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the "undesirability"

of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. The Fifth Circuit has been unwavering in its application of the above-stated criteria as represented by the cases of *In Re First Colonial Corp. of America,* 544 F.2d 1291 (5th Cir. 1977), *cert.* denied, 431 U.S. 904, 907 S.Ct. 1696, 52 L.Ed.2d 388 (1977) and *Matter of Multiponics, Inc.,* 622 F.2d 731 (5th Cir. 1980). An analysis of the above-stated cases reveals that heavy emphasis in determining the appropriate fee is placed upon the "results obtained" by those seeking compensation. An award of additional compensation in excess of the standard fee normally charged by counsel has been deemed justified based upon the successful results obtained. Such a heavy emphasis on the end product of the bankruptcy proceeding appears justified in light of this Honorable Court's holding in *Randolf v. Scruggs,* 190 U.S. 533, (1903), wherein this Court found that the benefit conferred on the estate and its creditors by services of the attorney is the proper measure of appropriate compensation.

The Ninth Circuit in stark contrast, is constrained by the "strict rule of economy" as espoused by *Matter of Beverly Crest Convalescent Hospital, Inc.,* 548 F.2d 817 (9th Cir. 1976) and *York International Building, Inc. v. Chaney,* 527 F.2d 1061 (9th Cir. 1975), in determining the reasonable compensation of an attorney. The Ninth Circuit concentrates almost exclusively upon the "time expended" on behalf of the estate and the hourly rate charged by the attorney. However, any such award must be "below that which is charged for equivalent services in the private market." (App. A, *infra,* p. 7a-8a). Little or no consideration is given to other factors such as the success of the bankruptcy administration, comparable fees charged by other attorneys, the skill required, the complexity of the case, the emergency nature of the case, etc. In the Ninth Circuit no award of fees in bankruptcy may exceed the standard hourly fee charged by the attorney regardless of how successful the administration of the bankrupt estate may be.

The conflict in determining the reasonableness of the fee is readily apparent as noted by the Court of Appeals' reference to *Rose Pass, supra* (App. A, *infra,* 7a). In an effort to reconcile the conflict, the Ninth Circuit cites *Matter of TMT Trailer Ferry, Inc.,* 577 F.2d 1296 (5th Cir. 1978), as a retreat from the doctrine

awarding enhanced compensation based upon the result of the bankruptcy proceeding. However, the case is readily distinguishable. In *TMT, supra,* the Fifth Circuit disallowed a $100,000.00 enhanced fee to the counsel for the trustee, where the court recognized that a considerable portion of *attorney's* time resulted from personal antipathy against the attorney for the stockholders committee and the SEC. Further, in *Matter of Multiponics, supra,* the Fifth Circuit Court approved the contingent compensation arrangement whereby the special attorney for the trustee was to have been awarded either $182,500.00 or $30,000.00 depending on the outcome of the case that he was handling. The Court of the Fifth Circuit reaffirmed its position that any award should be "commensurate with the 'results obtained' by those seeking compensation." (*Matter of Multiponics, supra,* 622 F.2d at 734). The Fifth Circuit thereby reaffirmed its position that the results of the bankruptcy are important, if not determinative, in computing the reasonableness of services rendered. The Fifth Circuit cannot be viewed as retreating from its position, as announced in *Rose Pass, supra.*

The Ninth Circuit's decision to limit an award of attorney's fees based primarily on the time expended is intrinsically unwise. The reliance upon time as the primary criteria is to "disregard that much of the attorney's work is cerebral; that a brilliant idea which may flash into an attorney's mind may be worth more than a thousand hours of routine services which requires no particular acumen." (Verzog, *Fees & Allowances — The Time Clock Approach,* N.Y.L.J., October 25, 1965, p.4). Adoption and approval of that type of analysis would serve only to reward the slothful.

Finally, the principles of "conservation of the estate and economy of administration" which is so fervently revered in the Ninth Circuit, represents an archaic and outdated view of compensation. To compensate attorneys in such a begrudging fashion has the undesirable effect of driving competent attorneys from the field of bankruptcy. It is significant to note that pursuant to 11 U.S.C. §330 of the Bankruptcy Code, as enacted in 1978, the doctrine of strict economy as espoused by *In Re Beverly Crest Convalescent Hospital, Inc.,* 548 F.2d 817 (9th Cir. 1976), has been specifically and emphatically rejected for the above-stated reasons. Unless this Honorable Court expressly rejects the doc-

trine of strict economy, vestiges of that concept may be carried over by the Ninth Circuit in its fee awards under the New Bankruptcy Code. This would have a chilling effect upon the willingness of able and competent attorneys from accepting cases in the bankruptcy area.

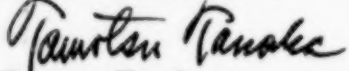
Due to the irreconcilable decisions and standards between the Fifth and Ninth Circuit Courts of Appeals, fee awards under the bankruptcy law are being administered in an inconsistent manner. Review by this Honorable Court is necessary to resolve the conflict and to establish uniform standards of fee awards.

CONCLUSION

For the reasons contained herein, the petition for a writ of certiorari should be granted.

DATED: Honolulu, Hawaii, February, 1982.

Respectfully submitted,



Tamotsu Tanaka
Pro Se

Appendix

APPENDIX A

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT

No. 80-4188

In Re THC FINANCIAL CORPORATION,

Debtor.

CREDITOR'S COMMITTEE #1 and
THC DEPOSITORS' ASSOCIATION

Appellants,

v.

J. CARL OSBORNE, Trustee, TAMOTSU TANAKA, and
HART, LEAVITT & HUNT,

Appellees.

Argued and Submitted June 10, 1981.
Decided October 19, 1981

On Appeal from the United States District Court for the District of Hawaii.

Before SNEED, FLETCHER and POOL, Circuit Judges.

POOLE, Circuit Judge:

This is an appeal by the Creditor's Committee of THC Financial Corp., Bankrupt (THC), from orders of the district court awarding additional compensation to two law firms and a bonus to an administrative assistant, all of whom rendered services to the trustee of the estate. Challenged also is the award of 4% in addition to the attorney's fees to cover the cost of Hawaii's general excise tax, assessed on attorney's practicing in that state. We affirm the award of the tax, reverse the bonus award, reverse the

supplemental award to one law firm and reverse and remand the award to the other.

I

THC, a former subsidiary of The Hawaii Corporation, operated in the State of Hawaii as an industrial loan company. To generate capital for loans, it offered debentures and deposit accounts to Hawaii residents. In December 1976, THC was placed under bankruptcy administration pursuant to Chapter XI of the Bankruptcy Act of 1898. At that time, THC had more than 14,000 depositors and debenture holders with claims against the estate exceeding $41 million. J. Carl Osborne was appointed receiver. In March 1977, the district court ordered that further proceedings be conducted under Chapter X of the Bankruptcy Act and Osborne was appointed trustee.

From December 1976 through December 31, 1978, William Raff served as special administrative assistant to Osborne. Salary was set by the court at $4,700.00 per month or $56,400.00 per year, without any requirement of accounting to the estate for time spent. Raff's work included coordinating litigation involving the estate, overseeing loan negotiations and personnel matters and supervising collection of THC assets. He was not classified as an employee of THC and received no personal compensation other than his salary. His work for the estate has been characterized by the district court as excellent.

Beginning in December 1976, Hawaii attorney Tamotsu Tanaka served as general counsel to the estate. Tanaka began practicing law in Hawaii in 1963 and has a practice with apparent emphasis in real estate and general business law. During the representation, Tanaka employed two associates and occasionally more experienced attorneys not formally associated with him. Better than half of the hours billed by Tanaka, and those working at his direction, were devoted to the administrative and coordination details necessarily associated with the failure of such a large

estate. Billed activities include processing and settling claims, transmitting notices to creditors and other interested persons, negotiating the sale of THC real estate and representing the estate in three trials involving real estate sales. In each respect, the district court found Tanaka's work to be thorough, excellent and of great benefit to THC and its creditors.

Interim compensation was paid to Tanaka on a monthly basis at the rate of $75 per hour for his time, $25-35 per hour for the time of his two associates and $50 per hour for the work of the outside, unassociated attorneys—the same rate those attorneys charged Tanaka. A total of 4,669 hours were billed and interim compensation of $269,165.00, plus 4% excise tax, was paid.

One of the trustee's obligations in a Chapter X proceeding is to prepare and submit a fraud report to the court. On February 2, 1979, Osborne retained the Hawaiian law firm of Hart, Leavitt & Hunt ("Hart firm") as special investigative counsel for this purpose, and also to pursue litigation against insurance companies who had issued director liability bonds indemnifying THC for the acts of certain of its officers and directors. Such insurance bond litigation had been initiated by THC creditors.

The job of preparing the report proved to be monumental and more than 8,400 hours were billed. In final form, the report has been acknowledged as excellent and of significant value both to the trustee and in obtaining a $5 million recovery in the creditor's liability bond litigation. The district court also found, however, that some work by Hart attorneys, particularly by associates and law clerks, was deficient, duplicative or unnecessary.

Interim compensation was paid to the Hart firm at the rate of $75 per hour for partner's time and $25 per hour for that of associates, with a monthly ceiling of $20,000.00 on payments. Interim awards totaled $391,945.70 plus excise tax.

II

These interim awards are challenged in this appeal only insofar as they include payment of Hawaii's 4% excise tax. The creditors' primary objections to compensation relate to payments authorized by the district court in addition to the sums previously described.

A

On June 29, 1979, the trustee filed an application to pay Raff a bonus of $25,000.00. That sum was awarded by the court, which noted that bonuses could be paid to those who, by their efforts, materially benefited the estate and enhanced creditor's equity. Also considered by the court as a basis for the bonus was Raff's service without traditional employment benefits such as retirement or health plans.

B

Tanaka requested $60,000.00 plus excise tax in additional compensation; $55,000.00 plus tax was awarded. The court noted that comparative rates for equivalent legal services in Honolulu ranged from $85–115 per hour and that Tanaka was entitled to an extra award in light of his competent, successful work for the estate. The amount awarded brought the compensation rate to approximately $85 per hour for the services of Tanaka and outside attorneys retained by him and $45 per hour for the work of Tanaka's associates.

C

The Hart firm's interim compensation having been limited to a maximum of $20,000.00 per month, the firm sought total compensation of $624,000.00 plus tax or a composite of $75 per hour

for each hour worked by any partner, associate or law clerk. Because of inadequacies in some of the firm's work, the trustee recommended a total fee of $500,000.00. The district court awarded $518,460.00 plus tax, or approximately $61.60 for each hour billed. While the court indicated that this amount adequately accounted for defects in firm work, it did not indicate how it arrived at the final figure or which attorney's hours or rates were being discounted.

D

Creditors argue that these extra awards, plus all the tax awarded to Tanaka and the Hart firm, are unreasonable and an abuse of the district court's discretion in setting compensation. Appellees consider the awards reasonable in light of the success of the THC reorganization and the apparent 100% recovery which creditors of the estate will enjoy.

III

As the district judge recognized, the award of compensation in this case is governed by Section 241 of the Bankruptcy Act of 1898 (52 Stat. 900, formerly codified as 11 U.S.C. § 641, hereinafter "§ 641"),[1] which provides in relevant part:

> The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—
>
> * * * * * * * *

1. The compensation statute has been changed in the Bankruptcy Act of 1978, 11 U.S.C. § 101, *et seq.*

(3) by the trustee and other officers, and the attorneys for any of them[.]

Our cases of *York International Building, Inc. v. Chaney*, 527 F.2d 1061, 1068-69 (9th Cir. 1975) and *Jacobowitz v. Double Seven Corp.*, 378 F.2d 405, 408 (9th Cir. 1967), set out numerous factors which should be considered when the district court determines, within its discretion, what compensation is appropriate under this section for those engaged in bankruptcy administration. We need not repeat those familiar principles. Rather, two propositions emerge clearly from our cases and dispose of this appeal: (1) An award under § 641 must be compensatory. It may not be simply a token of thanks or reward for good services. (2) The ceiling on any permissible award lies below that which is charged for equivalent services in the private market. *York International, supra*, 527 F.2d at 1069, 1072. Excellent work is a predicate to any award close to private rates. It is not a basis for an enhanced award in excess of normal charges.

Application of these principles requires that we reverse the bonus award to Raff and the supplemental award to Tanaka and reverse and remand the supplemental award to the Hart firm.

A

Bonuses may not be paid as part of the compensation allowed under § 641. See *Matter of Beverly Crest Convalescent Hospital, Inc.*, 548 F.2d 817, 821 (9th Cir. 1976); York International, supra, 527 F.2d at 1068-69; *accord, Matter of TMT Trailer Ferry, Inc.*,

577 F.2d 1296, 1303-04 (5th Cir. 1978) (per curiam). The payment to Raff must be reversed because it is nothing more than a bonus.[2]

It is suggested that as a substitute for the retirement or health plan Raff did not receive, the payment may be approved. We cannot agree that, so characterized, the payment is justified. At the time Raff was employed a completely reasonable salary of $56,400.00 per year was set. The record reveals no understanding between Raff and the trustee that added compensation would be forthcoming later to make-up for traditional but unpaid employment benefits. In such circumstances, belated justification for a significant increase in compensation, piled atop an originally fair salary, will not suffice to allow this payment.

B

The supplemental award to Tanaka must be reversed because it compensates him in excess of what he would have charged private clients during the period of the representation.

By awarding Tanaka an additional $55,000.00, the court brought the hourly rate of compensation for Tanaka and outside attorneys to $85 per hour. Yet the record indicates that the outsiders have charged only $50 per hour for their services and that Tanaka's rate to private clients reached $85 only after September 1, 1978. Previously, Tanaka's rate had been $70 or $75 per hour.

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2. Appellees argue that we should follow the decision of the Fifth Circuit in *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088, 1092 (5th Cir. 1977). In that case, an attorney was compensated in excess of his usual hourly rate because of his remarkable success in maximizing recovery for the estate creditors. While *Rose Pass* undoubtedly strengthens appellees' claims that bonus or enhanced compensation can be paid, we are not free to follow it in this circuit where a strict rule of economy applies in awarding compensation under § 641. See *Matter of Beverly Crest Convalescent Hospital, Inc., supra*, 548 F.2d at 821; *York International, supra*, 527 F.2d at 1068-69. And the Fifth Circuit itself has disapproved bonus payments under § 641. See *Matter of TMT Trailer Ferry, Inc., supra*, 577 F.2d at 1303.

Similarly, the final award compensates Tanaka at a rate of $45 per hour for the work of his associates. Yet only one of Tanaka's associate's time was ever billed to private clients at such a rate, and then only during part of the representation period.

While admitting the fees awarded exceed his hourly rates to private clients, Tanaka explains that his practice is to assess an added fee at the end of a successful private representation and that the $55,000.00 supplemental award is merely a reflection of his practice.

The record does not indicate that Tanaka and Osborne had an understanding that such a "contingent bonus fee" would be paid. At least in the absence of such an understanding, we cannot approve of enhanced fees because of successful work any more than we can approve the bonus payment to Raff. See *Matter of Beverly Crest Convalescent Hospital, Inc., supra,* 548 F.2d at 821 (even when a successful representation, attorneys' fees must be reduced when they are excessive).

Tanaka was well paid for his work by the interim awards granted to him by the court. Throughout the period he received interim awards of $75 which, until September 1, 1978, were equal to or actually exceeded his own private charges. He received full compensation for the work of the outside attorneys he retained, at $50 per hour. And he was paid $25-35 for the work of associates, which is generally within $5-10 of that which he charged private clients. "[U]tiliz[ing] our own collective experience in fixing reasonable compensation," *York International, supra,* 527 F.2d at 1072, we must conclude that the district court abused its discretion in awarding any additional compensation to Tanaka. The amounts awarded by interim compensation are generously close to his private client charges and in this circuit he "should not expect as much for [his] services in bankruptcy proceedings as [he] might in private employment." *Id.* at 1069.

C

The final award of $518,460.00 to the Hart firm for 8,400 hours must be reversed and remanded. Use of the composite figure of $75 per hour in requesting fees, and the composite of $61.60 in the award, makes it impossible for us to determine whether the final compensation relates favorably to Hart private client charges. Neither the hourly work of associates nor law clerks could be compensated at $61.60 per hour because the Hart firm did not charge its private clients that amount for such services. And while it is clear that the Hart fee request was discounted because of the quality of some of the work, we cannot determine how the district court arrived at the precise $61.60 figure or whether the discount for work quality applied to all Hart attorneys.

We accordingly reverse the supplemental fee award to the Hart firm. Because of the use of composite hourly rates, we are not prepared to say on this record that the Hart firm is not entitled to any additional compensation. A remand is necessary in the course of which the district court should first determine what Hart firm private charges would have been for each of the attorneys and law clerks whose hours have been billed. Once the court determines what the Hart firm would have charged its private clients for these services, it should compare that amount with what the firm has requested in total compensation. As in the case of Tanaka, the amount requested ought not to be expected to equal the negotiated rates of private practice if the request is to be consistent with *York International.* A request in excess of the *York* standard should be adjusted downward much in the manner Tanaka's interim awards are somewhat less than his normal private charges. Finally, because the district court also found that some billed Hart hours were for unnecessary or inadequate work, the fee must be further reduced to insure that payment reflects the necessity and quality of the work performed.

D

Finally, we affirm the district court's award of Hawaii's 4% excise tax to Tanaka and to the Hart firm.

Appellants argue that the tax is not a compensable expense because it is more akin to overhead, which is not recoverable under § 641. The attorneys argue that the tax should not be viewed as an expense at all, but rather as part of the compensation awarded by the district court and that, so viewed, it is reasonable.

We agree with the attorneys' characterization. Numerous law firms and attorneys were involved in this bankruptcy administration and received court approved compensation including payment of excise tax in addition to the hourly rate. Only the awards to Tanaka and the Hart firm have been challenged on appeal. It thus appears from the record that the accepted practice of much of the Hawaii bar is to pass this tax along to clients as a surcharge in addition to the hourly rate.

Viewed as compensation, it is reasonable that it be awarded. In setting the hourly rates for Tanaka and the Hart firm, we have already indicated that they be fixed somewhat below private rates. To require that they also not receive the tax would reduce their rates still further simply because they employ a traditional Hawaii billing practice which charges the tax as a surcharge. Such a result strikes us a punitive rather than consistent with the economy principles of our cases.[3]

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3. *York International, supra,* does not require that we reverse the award of the tax. Although that case arose from Hawaii and this court reduced attorney's compensation, the propriety of awarding the tax was not considered by the court.

IV

Award of the excise tax to attorneys involved in the administration of the THC estate is affirmed. The bonus payment to Raff and the supplemental compensation award to Tanaka are reversed. The supplemental compensation award to the Hart firm is reversed and remanded for further proceedings consistent with this opinion.

APPROVED IN PART, REVERSED IN PART, REVERSED AND REMANDED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

BANKRUPTCY NO. 76-0493

(Filed July 19, 1979)

In Re THC FINANCIAL CORP., a Hawaii corporation,
Debtor.

FINDINGS OF FACT
CONCLUSIONS AND ORDER

This matter came to be heard before the undersigned United States District Judge in his Courtroom, United States Courthouse, Honolulu, Hawaii, on the 28th day of June, 1979, after having been continued from the original hearing date of June 25, 1979, upon application for allowance of final compensation filed on February 15, 1979, by Tamotsu Tanaka, General Counsel for the Trustee;

Appearances were made by JAMES FEDER of Stutman, Treister & Glatt, special insolvency counsel for the Trustee; ALLEN F. COROTTO of the Securities and Exchange Commission; HENRY, WALLACH, KIMERER & LaVALLE, attorneys for the Creditors' Committee Number 1 and the THC Financial Corp. Depositors' Association, and by the Applicant. Notice to all creditors, stockholder, Securities and Exchange Commission and other parties in interest was provided as required by the Bankruptcy Act and by the Chapter X Rules.

Findings of Fact

Based upon the Application for Final Fees, Supplement to Final Fee Application, and Reply to Objection of Creditors' Committee No. 1 and the THC Financial Corp. Depositors' and

Creditors' Association filed herein and the oral testimony presented herein, this Court makes the following Findings of Fact:

A. Mr. Tanaka, as General Counsel for the Trustee, has performed legal services in the following general categories:

1. **Preparation and processing of bankruptcy documents.** Mr. Tanaka has the responsibility for the preparation of all applications to settle controversies, sell real estate, appointment of attorneys to assist the Trustee, applications to lease office space, etc., that affect the administration of the estate. If a hearing is required on the application of the estate. If a hearing is required on the application, then Mr. Tanaka generally would have responsibility to conduct the hearing, prepare and file any orders resulting from the hearing and mailing the application and orders to all persons on the official mailing list, which at this time totals 25 persons or corporations. The performance of this work has been done expeditiously and efficiently.

2. **Documentation of significant business transactions affecting the estate.** Mr. Tanaka, as General Counsel, has been the principal person representing the estate in documenting and closing several significant transactions such as the sale of the stock of Pacific Construction Company for $5.2 million to the Bank of Hawaii wherein the estate's loan to the Bank of Hawaii was reduced by the sum of $500,000.00; the sale of 677 agreements of sale for lots in Maui Meadows Subdivision and Kona Palisades Subdivision to the Bank of Hawaii for $6 million; the sale of the real property owned by Maui Ocean Vista Estates for $3.6 million cash in which the estate had a 50% interest. These transactions resulted in substantial cash benefits to the estate.

3. **Objections to Claims.** Mr. Tanaka has handled before this Court the filing and settling of objections to claims made against the estate. Of the $2.8 million worth of claims filed agains the estate to which objections were filed a little over $1.0 million of these claims were either withdrawn or disallowed by this Court.

The reduction of these claims resulted in a material benefit to the estate.

4. **Litigation.** Mr. Tanaka has handled litigation on behalf of the estate. Several of the more significant cased involved the hearings before this Court. One case concerned the assignment by the estate of its Pearlridge office lease wherein this Court found that the Lessor could not unreasonably refuse to consent to the assignment of the office space lease owned by the estate to a savings and loan association for the sum of $72,000; another case involved the hearing before this Court upon the motion by the Bank of Hawaii group to find the Trustee of this estate and the Trustee of The Hawaii Corporation unreasonable in withholding consent to the sale of the stock of Pacific Construction Company to Artec, Inc. A three-day hearing resulted in a settlement between the parties wherein the estate received a net benefit of $500,000. Mr. Tanaka has also appeared before this Court in several collection cases on behalf of the estate wherein judgments including attorney's fees have been rendered against various debtors. Any collection of the attorney's fees as a result of a judgment or settlement has been turned over to the estate. In one instance the settlement called for payment of attorney's fees of $11,381.69. In contrast the time spent by Mr. Tanaka or his office was less than $1,000, however, the entire sum of $11,381.69 was turned over to the estate. Mr. Tanaka has collected on behalf of the estate over $1,475,000 from various debtors, which includes more than $35,000 in attorney's fees which were paid over to the estate. These litigation efforts by Mr. Tanaka have resulted in substantial benefits to the estate.

5. **Participation in negotiations.** Mr. Tanaka also at the request of the Trustee has participated in various negotiations relating to the sale of various assets of the estate or settlement of outstanding loans owed to the estate. In one instance involving the sale of Kalama View Subdivision, through Mr. Tanaka's insistence the purchase price was increased by $50,000; later at the hearing to confirm the sale an auction occurred which Mr. Tanaka conducted resulting in an increase of the sales price by

$125,000. The judgment and experience that Mr. Tanaka possesses and has utilized in these proceedings were amply demonstrated in these examples.

6. **Local connection.** Mr. Tanaka has performed services in rendering advice and information concerning the local situation to the Trustee and his staff who, not being residents of Hawaii, or if a resident, not a long-term resident at the time of this bankruptcy, were not familiar in detail with the business relationships between various companies in the State of Hawaii, the local political situation and the laws and customs of the State of Hawaii.

7. **Customary charges.** In reviewing the evidence pertaining to customary charges in the community for services rendered by other attorneys for similar services, we note that the range of services on an hourly basis in 1978 varies from about $85 per hour to $115 per hour for the attorneys having approximately the same years of experience as Mr. Tanaka, who has been practicing law since 1963 and all of that time in Hawaii. The Court's knowledge of the customary charges for similar legal services during the relevant period of this application confirms the evidence presented.

B. **Conclusions.** Based upon this Court's experience in assessing the performance of Mr. Tanaka during his many appearances before this Court, this Court finds that his work has been of consistent high quality. Mr. Tanaka has been well prepared in all of his appearances before this Court. Mr. Tanaka has prepared and presented the matter in the best possible position for his client; that his work has been performed expeditiously and efficiently at minimal cost to the estate; that the judgment and experience Mr. Tanaka has gained over the years was clearly shown in several cases before this Court.

This case is not an ordinary bankruptcy case. An estate having assets of over $40 million and over 13,000 individual depositors and creditors is by definition a complex case. Mr. Tanaka was called upon and did render services beyond normal hours and situations, particularly during the first months of the bankruptcy

proceedings commencing in December of 1976. The hourly charge based upon the time spent to perform the task is an important element in evaluating the final fee application; however, the time spent for legal services is not the sole criteria. The complexity of the task, the skill and experience brought to bear by the attorney performing the task, the diligence, tenacity and judgment displayed by the attorney; customary charges in the community for such or similar legal services are other significant factors.

Mr. Tanaka has been paid for legal services the sum of $269,165 plus general excise taxes as of March 1, 1979. This represents the total time of 4,669 hours by Mr. Tanaka and various members of his firm or of Izumi & Tanaka. This Court concludes that a reasonable fee for Mr. Tanaka for legal services rendered on behalf of the estate as of March 1, 1979, is $324,165 plus general excise tax on such amount, less any and all payments to Mr. Tanaka for legal services from interimcompensation requests to March 1, 1979. In addition the costs advanced by Mr. Tanaka in these proceedings and for which he has been reimbursed by orders of this Court to March 1, 1979, is hereby confirmed and ratified.

IT IS HEREBY ORDERED that the application of TAMOTSU TANAKA be and hereby is granted, in that TAMOTSU TANAKA is hereby allowed a reasonable fee for legal services rendered on behalf of the estate as of March 1, 1979, in the amount of $324;165 plus general excise tax on such amount, less $269,165.00 plus tax previously awarded and paid to Mr. Tanaka for legal services from interim compensation requests to March 1, 1979. In addition, the costs advanced by Mr. Tanaka in these proceedings and for which he has been reimbursed by orders of this Court to March 1, 1979, is hereby confirmed and ratified; and it is further

ORDERED, that the Trustee is hereby authorized and

directed to pay or cause to be paid the sums herein approved to TAMOTSU TANAKA.

DATED: Honolulu, Hawaii, 19 July 1979.

/s/ Martin Pence

United States District Judge

APPROVED AS TO FORM:

SHERMAN S. HEE
HENRY, WALLACE, KIMERER & LaVELLE

By /s/ ----------

Attorneys for Creditors Committee
Number 1 and the THC Financial
Corp. Depositors' Association

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 80-4188

(Filed January 14, 1982)

In Re THC FINANCIAL CORPORATION,

Debtor,

CREDITORS' COMMITTEE #1 and
THC DEPOSITORS' ASSOCIATION,

Appellants,

vs.

J. CARL OSBORNE, Trustee, TAMOTSU TANAKA,
and HART LEAVITT & HUNT

Appellees.

ORDER

Before: SNEED, FLETCHER and POOLE, Circuit Judges.

Appellee Tamotsu Tanaka's petition for rehearing
is hereby denied.
Fed. R. App. P. 40.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 80-4188

(Filed January 28, 1982)

In Re THC FINANCIAL CORPORATION,

Debtor,

CREDITORS' COMMITTEE #1 and
THC DEPOSITORS' ASSOCIATION,

Appellants,

vs.

J. CARL OSBORNE, Trustee, TAMOTSU TANAKA,
and HART LEAVITT & HUNT

Appellees.

ORDER ON MOTION FOR STAY OF MANDATE
(Rule 41(b) Fed.R.App.P.)

Upon due consideration of appellee motion for stay of the mandate of this Court in the above cause pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari, such petition to be filed

in the Clerk's Office of the Supreme Court of the United States on or before February 22, 1982,

IT IS ORDERED that the motion for stay of mandate be, and the same is hereby granted.

/s/ Cecil F. Poole

United States Circuit Judge
POOLE

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*In the event that the motion for stay of mandate and the petition for writ of certiorari are granted, then this stay will continue pending the final disposition of the case by the Supreme Court of the United States.

CA-003 (12/3/79)

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

BANKRUPTCY NO. 76-0493

(Filed May 18, 1977)

In Re: THC FINANCIAL CORP., a Hawaii corporation,
Debtor.

ORDER ESTABLISHING A FIXED DATE FOR HEARING ON MONTHLY INTERIM COMPENSATION, REIMBURSEMENT OF EXPENSES AND OF MAXIMUM AMOUNTS THAT MAY BE AWARDED TO TRUSTEE AND DESIGNATED ATTORNEYS AND ACCOUNTING FIRMS THAT PERFORM CONTINUOUS AND EXTENDED SERVICE TO THE ESTATE AND DATE, TIME AND PLACE OF FIRST HEARING

Upon application of J. CARL OSBORNE, Trustee in Reorganization, and due notice having been given to all creditors, stockholders, Securities and Exchange Commission and other parties in interest as required by the Bankruptcy Act and Chapter X Rules, this matter was continued after return of the notice was held, and was heard before the undersigned United States District Judge in his Courtroom in the United States Courthouse, Honolulu, Hawaii, on the 9th and 10th days of May, 1977, at 3:00 o'clock p.m.

Appearances were made by TAMOTSU TANAKA on behalf of Izumi & Tanaka, general counsel for the Trustee in Reorganization, JAMES FEDER, on behalf of Stutman, Treister & Glatt, special insolvency counsel for the Trustee in Reorganization, DON J. GELBER, counsel for The Hawaii Corporation, sole stockholder of the debtor, and BROOK HART, on behalf of Hart, Leavitt & Hall, special investigative counsel for the Trustee in Reorganization, and JOHN CHANIN, on behalf of Chanin &

Ruthruff, counsel for the Creditors' Committee of the debtor.

The Court having read and filed the application and having received the alternative method of providing notice to the creditors, stockholder, Securities and Exchange Commission (hereinafter "SEC") and all other interested parties and having determined that the request made in the application as modified by the SEC proposal is in the best interest of the estate and good cause appearing, it is hereby

ORDERED that the application of J. CARL OSBORNE, as modified by the SEC proposal as follows is approved:

1. The names of the persons approved to submit application for monthly interim compensation and reimbursement of expenses and the maximum amount that can be paid monthly for interim compensation are:

Name	Maximum Amount of Monthly Interim Compensation
a. J. Carl Osborne	$ 7,500.00
b. Izumi & Tanaka	$20,000.00
c. Stutman, Treister & Glatt	$20,000.00
d. Hart, Leavitt & Hall	$20,000.00
e. Touche, Ross & Company	$20,000.00

2. The maximum amount of monthly interim compensation does not include reimbursable expenses and Hawaii general excise taxes levied on the value of the services rendered, both of which may be paid in addition to the maximum amount of monthly interim compensation. The maximum hourly rate that may be awarded to any attorney of the above-mentioned law firms is $75.00 per hour.

3. Each of the above that has performed services to the estate shall file an application for interim compensation on or before the second Friday of the following month.

4. A hearing on the applications filed shall be held at

9:00 a.m. on the fourth Friday of the same month in which the applications are filed in the courtroom of Judge Martin Pence in the U.S. District Courthouse, Honolulu, Hawaii. Any change in the location and time of the hearing shall be posted on the Court's bulletin board. If the fourth Friday of any month is a Federal holiday, then the hearing shall be continued until the following Friday at 9:00 a.m. The first hearing shall be held on Friday, June 24, 1977, at 9:00 a.m. and shall be for the months April and May, 1977.

5. All applications for monthly interim compensation shall comply substantially with Rules 219 and 10-215 of the Rules of Bankruptcy Procedure and shall set forth, in reasonable detail, the services rendered, the time expended and expenses incurred during the preceding month (or months, in case of the first application), and the amounts requested. Any amount in excess of the monthly maximum amount of interim compensation provided hereinabove shall not be paid and shall not be cumulated and added to an application for compensation for the ensuing month or months but may be awarded after a hearing for which notice was given to the debtor, all creditors, stockholder, Securities and Exchange Commission and all other parties in interest, and if not so awarded, shall be taken into account upon the termination of the proceeding when final compensation is determined and allowed. Said interim allowances of compensation shall be considered as partial compensation for services rendered to the estate, and any allowances made shall not be computed on any basis of overall compensation or allowance, but shall be taken into account upon the termination of the proceeding when final compensation for the Trustee and Trustee's attorneys and certified public accounting firm is determined and allowed; and it is further

ORDERED that the Trustee be and hereby is authorized and directed to notify the debtor, all creditors, stockholder, Securities and Exchange Commission and all other parties in interest of this Order prior to the date of the first hearing within

the time period provided in Bankruptcy Rule 10-209; and it is further

ORDERED that except for the general notice of the first hearing, no other notice of the date, time, and place of each subsequent monthly interim compensation hearing need be provided to the debtor, all creditors, stockholder, Securities and Exchange Commission and all other parties in interest.

Dated: Honolulu, Hawaii, May 18, 1977.

/s/ Martin Pence

United States District Judge

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

BK. NO. 76-0512
BK. NO. 76-0493

(Filed May 16, 1979)

In the Matter of THE HAWAII CORPORATION,
Debtor.

In the Matter of THC FINANCIAL CORP.,
a Hawaii corporation,
Debtor.

ORDER ESTABLISHING NEW GUIDELINES FOR INTERIM ALLOWANCES OF COMPENSATION

At the hearing held in Bk. No. 76-0512, above, on March 29, 1979, on various applications, including one for an allowance of compensation to one of the special counsel for the estate, the court had an opportunity to review the guidelines which the court established shortly following the commencement of the above-captioned proceedings for the awarding of interim allowances of compensation in both of said cases. Heretofore in these cases, the court has allowed interim compensation to general and special counsel for the respective trustees of the estates of the above-captioned debtors computed in accordance with the following guidelines: (a) for each attorney whose normal hourly rate for services similar to those rendered to the trustee is $75.00 or less, the court has allowed said normal hourly rate; (b) for each attorney whose normal hourly rate for services similar to those rendered to the trustee is in excess of $75.00, the court has allowed $75.00 per hour for said professional services; (c) for each paralegal assistant and law clerk, the court has allowed a maximum of $15.00 per hour for paralegal and legal research services. In the

case of certified public accountants serving the respective estates, the court has heretofore allowed for purposes of interim compensation the hourly rates set forth in the agreements reached by the respective estates with the certified public accountants.* In each case, the court has allowed, where applicable, the State of Hawaii General Excise Tax on the aforementioned hourly rates, except in the case of those accountants where the General Excise Tax was included in setting the hourly rates.

The court is intimately familiar with the services rendered by professionals serving these estates, the complexity of the legal and accounting matters which the lawyers and accountants for the respective estates are required to handle, and the general increase in the costs for providing professional services which has taken place principally in Honolulu and also in other cities where said professional services are rendered.

THE COURT FINDS that although the guidelines as proposed and established by the court shortly following the commencement of these proceedings were fair and adequate when promulgated, the guidelines should be revised in light of the above increased costs of providing said services.

IT IS, THEREFORE, HEREBY ORDERED BY THE COURT, *SUA SPONTE,* THAT:

1. Effective April 1, 1979, for professional services rendered thereafter, the following guidelines shall apply to allowances of interim compensation to attorneys and law firms serving as general and special counsel to the trustee for the above-captioned estates: (1) for each attorney whose normal hourly rate for services similar to those rendered to the trustee is $80.00 or less, the court shall allow up to said normal hourly rate; (2) for each attorney whose normal hourly rate for services similar to

*These agreements were approved by the court at the time the court authorized employment of the accountants. However, the accountants are required to apply for interim and final compensation in accordance with the Bankruptcy Act and Chapter X Rules.

those rendered to the trustee in excess of $80.00, the court shall allow up to $80.00 per hour for said professional services; (3) for each paralegal assistant and law clerk, the court shall allow up to $20.00 per hour for paralegal and legal research services.

2. In addition, with respect to all law firms doing business in the State of Hawaii which are required to pay the State of Hawaii General Excise Tax on earned professional fees, said tax will be added to any amount of interim compensation awarded.

3. Effective April 1, 1979, Ernst & Ernst, Certified Public Accountants, retained by the Chapter X trustee of The Hawaii Corporation to render accounting services to the estate, said accounting firm may apply for services on an "across-the-board" rate of $36.00 per hour plus General Excise Tax of $1.44, for accounting personnel other than Frank Wolf and other similarly qualified mainland partners handling special investigation and accounting review matters;* provided, however, that if the total fees computed on said firm's prevailing rates for private clients is less than the rates provided for herein the lower method of computation shall prevail.**

4. The interim allowances of compensation set forth above shall not be deemed to be final compensation for services rendered, and the court reserves jurisdiction to make whatever adjustments and modifications to said allowances as it deems necessary or appropriate and to make such further allowances as it deems appropriate at the time of final hearing on allowances of compensation and reimbursement of expenses.

5. Except as modified herein, the 'Order Establishing Procedures for Interim Allowances of Compensation and Reimbursement of Costs and Expenses to the Trusteee, the Trustee's

*With respect to these accountants, the hourly rates previously authorized will continue to prevail.

**The Chapter X Trustee of The Hawaii Corporation has indicated that he does not object to Paragraph 3, above.

Attorneys, and Accountants," filed herein on September 2, 1977, and the "Order Approving Dates and Times Set for Hearings on Applications for Interim Allowances of Compensation and Reimbursement of Costs and Expenses and Notice Thereof," filed September 29, 1977, in Bk. No. 76-0512, as modified from time to time, and the "Order Establishing a Fixed Date for Hearing on Monthly Interim Compensation, Reimbursement of Expenses and of Maximum Amounts that May Be Awarded to Trustee and Designated Attorneys and Accounting Firms that Perform Continuous and Extended Service to the Estate and Date, Time and Place of First Hearing," filed May 18, 1977, in Bk. No. 76-0493, as modified from time to time, shall continue to prevail and it is specifically ordered that the maximum amount for which each professional rendering services to the respective estates is permitted to apply on a monthly basis, under the aforesaid procedures, shall continue in full force and effect.

DATED: Honolulu, Hawaii, May 16, 1979.

/s/ Martin Pence

United States District Judge

APPROVED AS TO FORM:

/s/ Don Jeffery Gelber
DON JEFFERY GELBER
Attorney for Trustee of
The Hawaii Corporation

/s/ Tamotsu Tanaka
TAMOTSU TANAKA
Attorney for Trustee of
THC Financial Corp.